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Re: *Game Show Network, LLC v. Cablevision Systems Corporation*,
MB Docket No. 12-122, File No. CSR-8529-P

To the Commission:

Pursuant to Section 1.277 of the Commission's Rules, 47 C.F.R.
§ 1.277(c), we write to request oral argument on Cablevision Systems Corporation's
("Cablevision") Exceptions to the Initial Decision of the Chief Administrative Law Judge
("ALJ") in the above-captioned action.

Cablevision respectfully submits that oral argument will assist the
Commission in assessing the complex factual and legal issues presented by this case.
As the Commission noted in connection with its order extending the page limit for
briefing, "[t]he Initial Decision is based on a large record and addresses a number of
complex factual and legal questions related to carriage of video programming."¹

¹ See *Game Show Network, LLC v. Cablevision Sys. Corp.*, Order, DA 16-1393 (OGC
rel. Dec. 15, 2016).

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As the briefing on the Exceptions reveals, there are sharp differences between the positions advanced by Cablevision and Game Show Network, LLC (“GSN”) that would benefit from oral argument before the Commission. Those differences include the following:

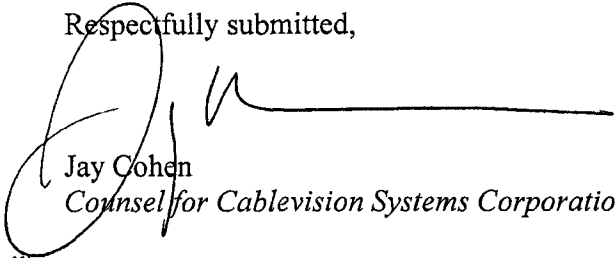
- **Standard of Review:** Cablevision submits that it is entitled to a full *de novo* review of the Initial Decision by the Commission, particularly because the case does not turn on assessments of witness credibility to which the ALJ is afforded a degree of deference. GSN has argued for a more deferential review, an argument which we believe to be contrary to the law.
- **Direct Evidence Standard:** The ALJ applied a new, incorrect standard for “direct” evidence of discrimination predicated merely upon Cablevision’s purported disparate treatment of affiliated and non-affiliated networks, a standard that GSN urges the Commission to adopt. By contrast, as we show in the Exceptions, Commission precedent is clear that direct evidence of discrimination consists of only “smoking gun” evidence that *compels* the conclusion that an MVPD discriminated on the basis of affiliation. And, contrary to the position advanced by GSN, nothing in Section 616 requires an MVPD to consider taking an adverse carriage action against its affiliated networks before doing so to a non-affiliated network. GSN wrongly argues that Cablevision was so obligated.
- **Tennis Channel:** The ALJ fundamentally erred in failing to apply the governing “net benefit” test from the D.C. Circuit’s *Tennis Channel* opinion. GSN urges the Commission to correct the ALJ’s error by arguing for a three-prong alternative test that *Tennis Channel* did not establish and that, in any case GSN cannot meet.
- **Similarly Situated:** In finding there to be circumstantial evidence of carriage discrimination, the ALJ failed to consider all of the relevant factors laid out by the Commission in determining network similarity. GSN urges the Commission to affirm the ALJ’s cherry-picking of the evidence. However, a *de novo* review of the entire record that GSN seeks to avoid reveals that the ALJ ignored a number of critical factors expressly identified in Commission rules and prior program carriage cases that, if considered, lead to the conclusion that GSN is not similarly situated to WE tv or any other network that was affiliated with Cablevision.
- **Unreasonable Restraint:** There is no substantial evidence to support the ALJ’s finding that GSN’s ability to compete was unreasonably restrained by Cablevision’s carriage decision. GSN’s contentions concerning harm fly in the face of the clear evidence demonstrating that GSN otherwise is a thriving fully distributed network with increased subscribership, revenues, and profits.
- **First Amendment:** Because Cablevision is no longer vertically integrated with any affiliated network as a result of a post-trial corporate transaction separating it from the networks that the ALJ (erroneously) found to be similarly situated to GSN, there

remains no conceivable substantial government interest in regulating Cablevision's speech to protect GSN from any prospective harm arising from vertical integration. Accordingly the ALJ's carriage remedy, a forward-looking injunction, is not supportable.

* * *

Cablevision stands ready to present argument on these and any other issue at the convenience of the Commission.

Respectfully submitted,



Jay Cohen

Counsel for Cablevision Systems Corporation

cc: Counsel of Record (by email)